IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
C.R. No: 142 of 2006

Date of decision:6.7.2007

State of H.P. through D.C. and another **Petitioners**

Versus

Dharam Chand **Respondent**

Coram
The Hon'ble Mr. Justice Deepak Gupta, ACJ

Whether approved for reporting?[1]

For the Petitioner: Mr. J.S.Guleria, Law Officer

For the Respondents: Mr. M.S. Guleria, Advocate

Deepak Gupta, ACJ.

The respondents herein had filed a suit for possession of the suit land on which a water tank had been constructed by the State. A decree was passed in favour of the respondent-plaintiff. The State went up in appeal and the appellate court modified the decree and directed that in case the State acquires the land and completes the acquisition proceedings within 6 months from 18.9.2003, the suit shall be dismissed, failing which the plaintiff would be entitled to take possession of the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

land. Admittedly, the acquisition proceedings were started, but it appears that they were not completed within 6 months and the award was announced on 21.6.2004, i.e. after a period of 6 months. The plaintiff, however, received a sum of Rs. 35,736/- in terms of the award.

Thereafter the decree holder filed an application for execution of the decree and one of the grounds taken was that acquisition proceedings have not been completed within time. When it was pointed out to the decree holder that he had received the amount under the award, his counsel made a statement that the amount shall be returned alongwith interest and the decree holder should be granted possession of the land. The trial court permitted the decree holder to deposit the amount and adjourned the matter. It is this order dated 21.6.2006 passed by the Civil Judge, Senior Division, Hamirpur which is under challenge whereby he has permitted the decree holder to deposit the amount received by him.

It appears that the executing court has not at all understood the provisions of the Land Acquisition Act. Assuming for the sake of argument that the acquisition proceedings were not completed within the prescribed period, does that mean that the State loses its powers to

acquire the land under the provisions of the Land Acquisition Act ? No injunction can be granted by any civil court whereby the State can be restrained from acquiring any land. Even if a decree of possession simplicitor had been passed in favour of the decree holder, the State could have thwarted the decree by acquiring the property under the Land Acquisition Act. Therefore, no purpose would be served if the decree holder is permitted to refund the amount since he cannot obtain possession of the land. In any event since he has taken part in the acquisition proceedings and accepted the acquisition compensation, it does not lie in his mouth to say that since the award was not passed within 6 months, therefore, he be permitted to execute the decree for possession.

Keeping in view the above discussion, the revision petition is allowed and the order of the learned trial court is set aside and it is held that since the award has been passed in favour of the decree holder and amount has been received by him, he is not entitled to execute the decree. In case the decree holder is not satisfied with the amount awarded to him in land acquisition proceedings, he can approach the Land

Acquisition Collector for making a reference under Section 18 of the Land Acquisition Act.

July 6, 2007(K) (Deepak Gupta), ACJ